

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Testimony indicated that the subject property, known as 12414 Engleberth Road, consists of .46 acres zoned R.C. 5 and is improved with a dilapidated dwelling as depicted in Petitioners' Exhibit 4. Said property consists of two 50-foot wide lots, known as Lots 55 and 54 of Eagle Nest Point, and is located within the Chesapeake Bay Critical Areas on Brown's Creek. Petitioners purchased the subject property in 1978 and are desirous of removing the existing structure and reconstructing a new two story dwelling with attached garage to accommodate their growing family. Testimony indicated Petitioners reside on Lot 56 and have outgrown their present home. Petitioners testified that if required to strictly comply with the zoning regulations, no house could be built as the side yard setback requirements are 50 feet and each lot is only 50 feet wide. Testimony indicated that the subject dwelling can be built in compliance with all other building code requirements and Critical Areas legislation. Further

The facts and evidence presented tend to establish that special conditions or circumstances exist which are peculiar to the land or structures located within the Chesapeake Bay Critical Areas of Baltimore County; that to deny the relief requested would result in practical difficulty, unreasonable hardship, or severe economic hardship upon the Petitioner; and that strict compliance with the Chesapeake Bay Critical Area requirements and the B.C.Z.R. would deprive the Petitioner of rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Areas in Baltimore County. The granting of the relief requested will not confer upon the Petitioner any special privilege that would

These recommendations shall be attached hereto and become a permanent part of the decision rendered in this case. There is no evidence in the record that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is compliance with the requirements of the Department of Environmental Protection and Resource Management as more fully described below.

IT IS FURTHER ORDERED that the Petitioner shall comply fully and completely with all requirements and recommendations of the Department of Environmental Protection and Resource Management, as set forth in the comments dated March 13, 1990, attached hereto and made a part hereof.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bj:

THE

S. Zehe Oberm

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County
2248 Feb. 15.

[illegible]

CERTIFICATE OF PUBLICATION
Office of
THE AVENUE NEWS

442 Eastern Blvd.
Baltimore Md 21221
February 15, 1990

THIS IS TO CERTIFY, that the annexed advertisement of
James L. Mitchell in the matter of Petition for Zoning
Variance on 1241 Engleberth Rd. Case # 90-354-A, P.O.
10001241, is \$ 14.00, a fee of \$51.07
for the same.

was inserted in **The Avenue News** a weekly newspaper published in Baltimore County, Maryland once a week for 1 successive week(s) before the 16 day of Feb 1990 that is to say the same was inserted in the issues of Feb 15 19 00

The Avenue Inc.
per publisher

Quinn Radmore

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

DATE 3/2/90

Re. & Mrs. James L. Mitchell
1241 Englebeth Road
Baltimore, Maryland 21221

Re: Petition for Zoning Variance
CASE NUMBER: 90-354-A
W/S Englebeth Extended, 110' N of c/l of Cross Road
1241 Englebeth Road
15th Election District - 4th Councilmanic
Petitioner(s): James L. Mitchell, et ux
HEARING: THURSDAY, MARCH 5, 1990 at 2:00 p.m.

Dear Mr. & Mrs. Mitchell:

Please be advised that a \$26.08 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY

Baltimore County
Zoning Commission
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3333

J. Robert Haines
Zoning Commissioner

1/31/90

NOTICE OF HEARING

Dennis F. Rasmussen
County Executive

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 110 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Zoning Variance
CASE NUMBER: 90-354-A
W/S Engleberth Extended, 110' N of c/ of Cross Road
1241 Engleberth Road
15th Election District - 5th Councilmanic
Petitioner(s): James L. Mitchell, et ux
HEARING: THURSDAY, MARCH 15, 1990 at 2:00 p.m.

Variances To allow two sideyard setbacks of 23' 7" in lieu of the required 50 ft.

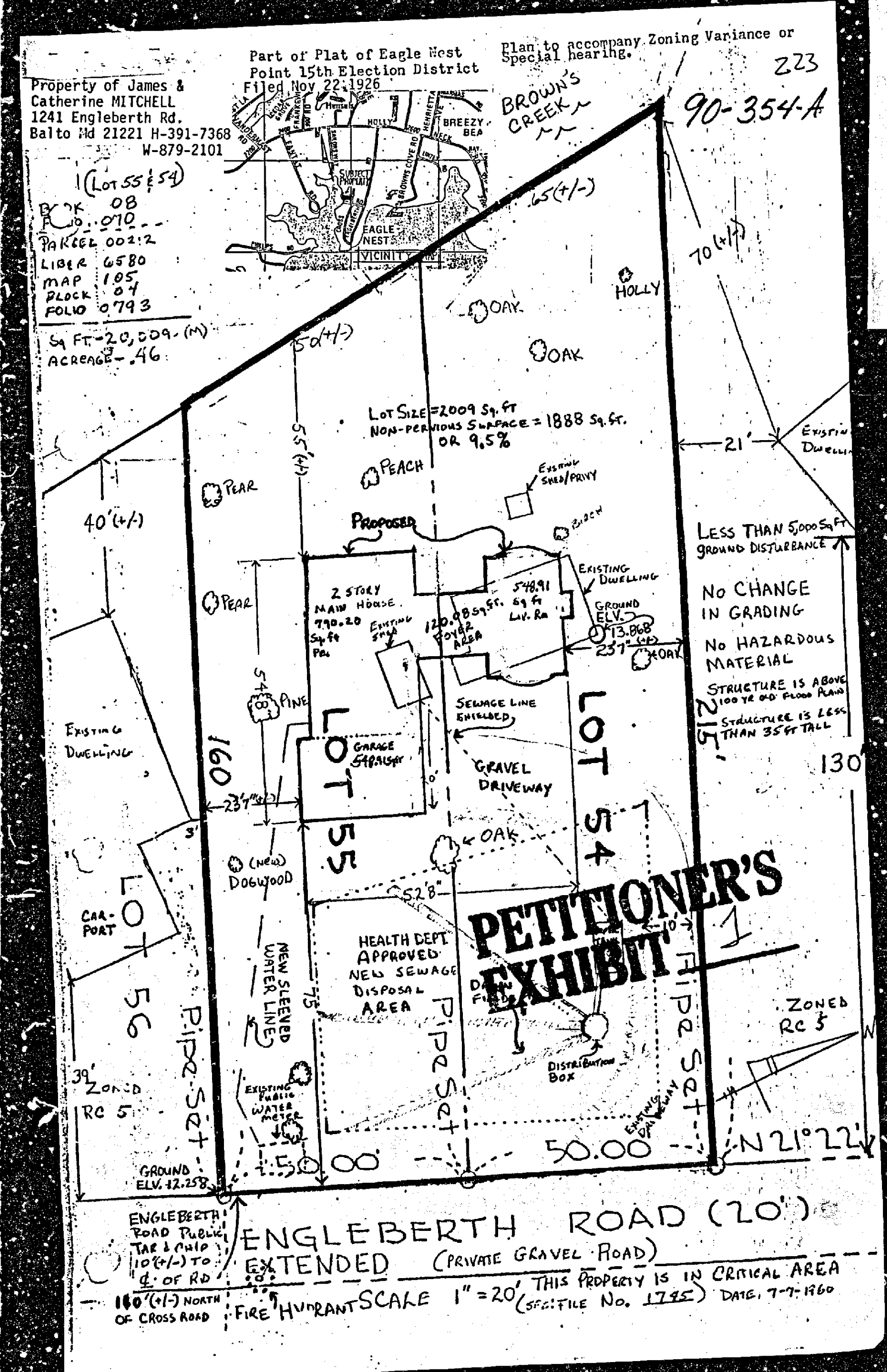
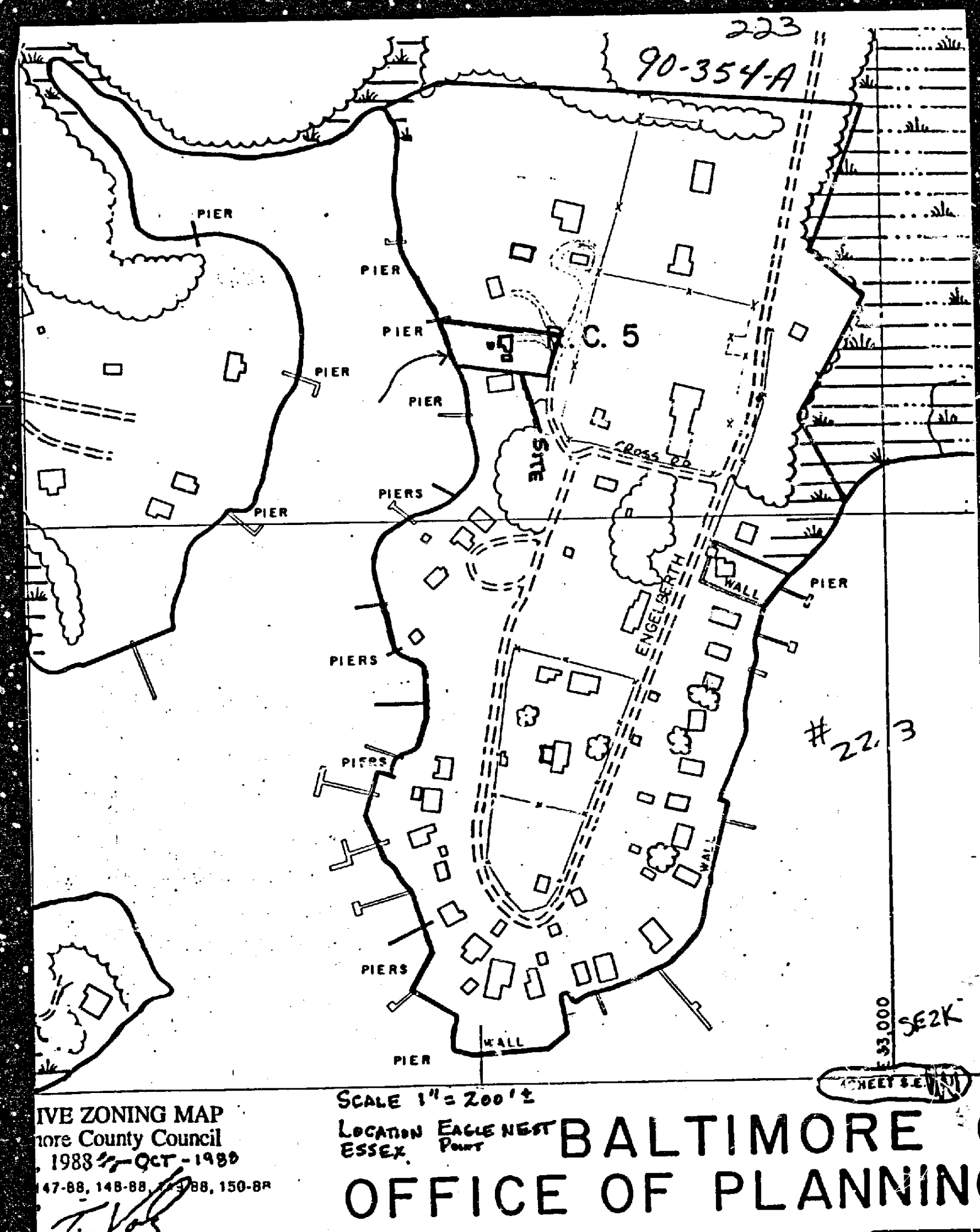
In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

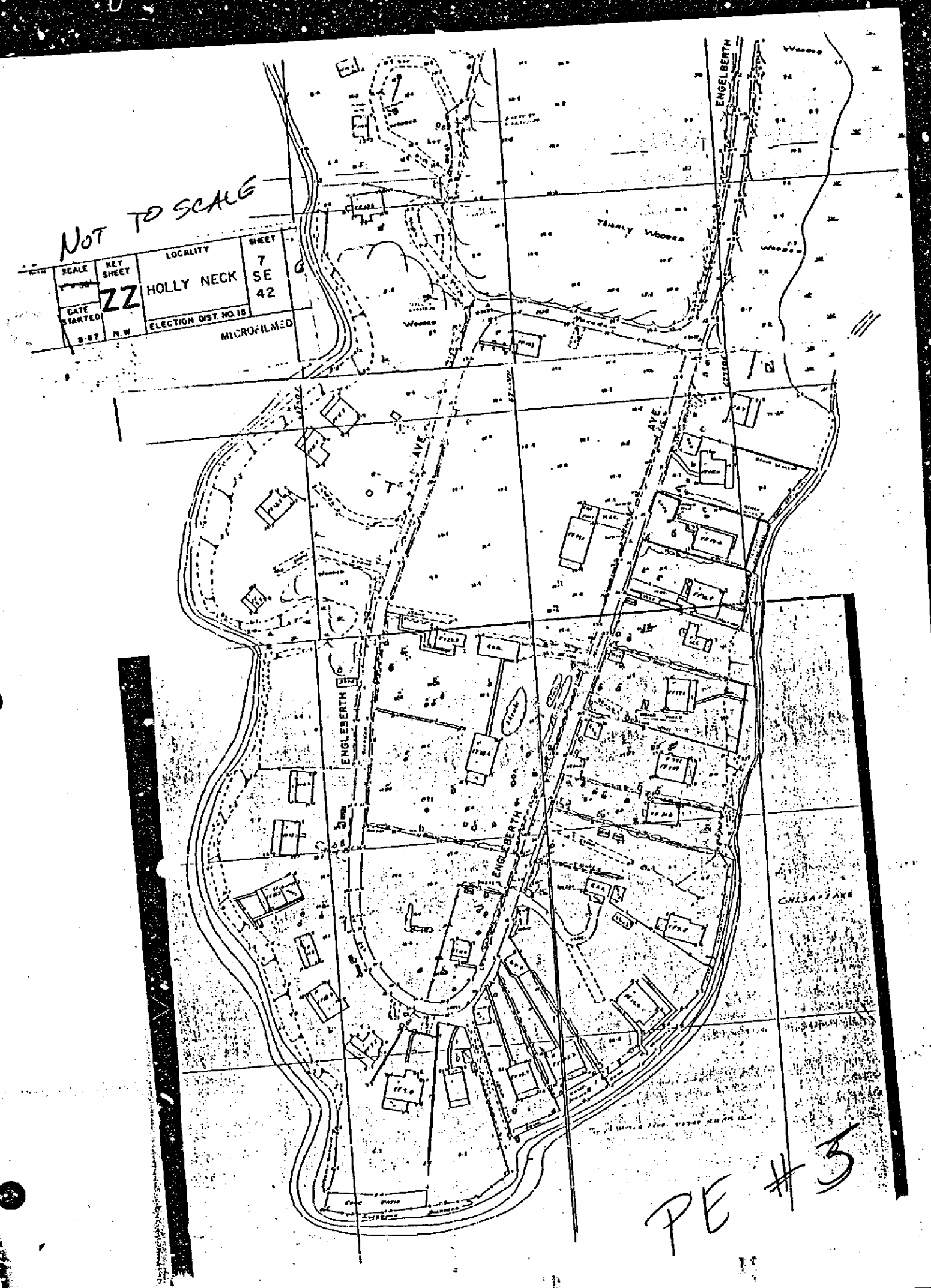
NOTE:
(If "PHASE II" of the "SHOW EMERGENCY PLAN" is in effect in Baltimore County on the above hearing date, the hearing will be postponed. In the event of snow, telephone 887-3331 to confirm hearing date.)

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

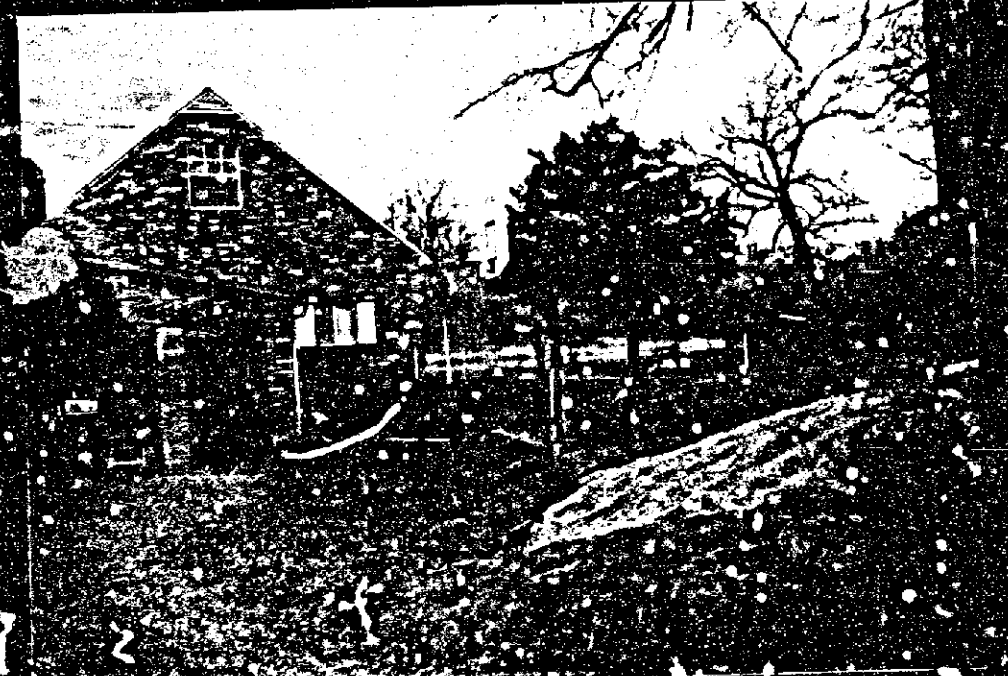
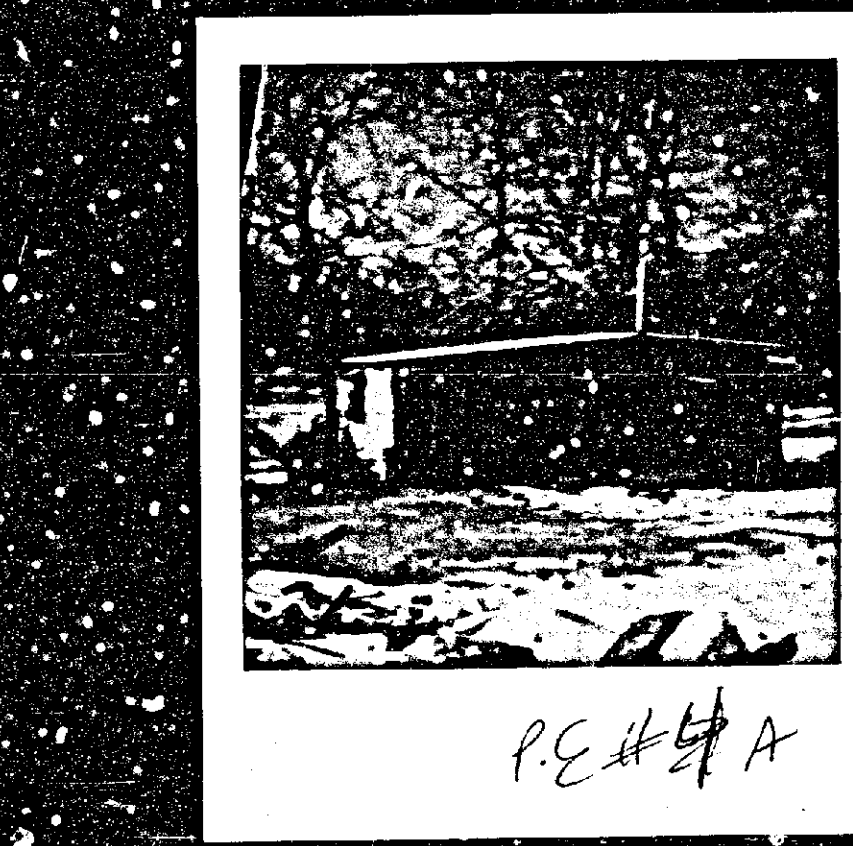
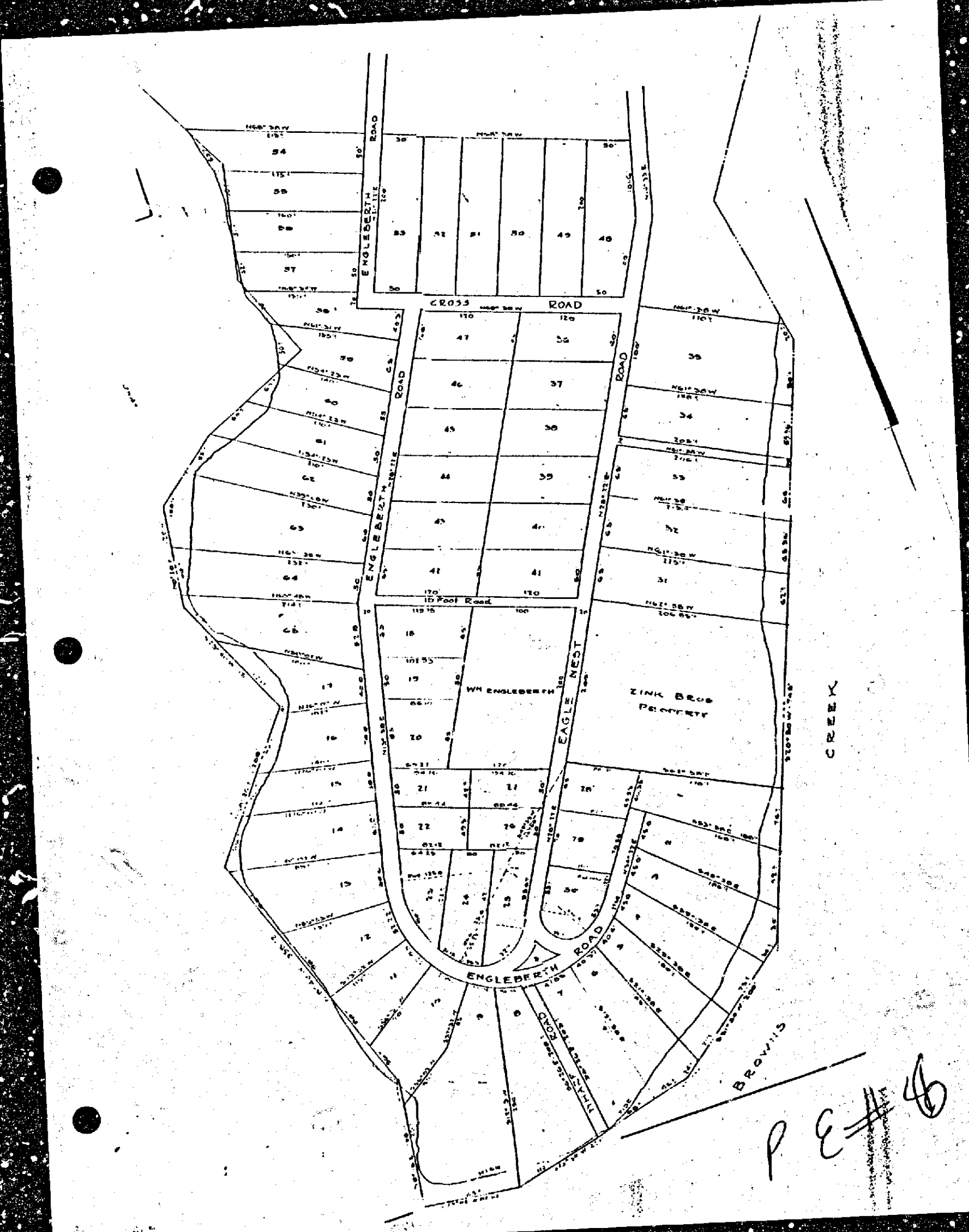
cc: *Petitioners*

Plan to accompany Zoning Variance or

[illegible]



*Pittman's
Photographs
4A-4C
90-354-A*



BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. J. Robert Haines
Zoning Commissioner
DATE: March 13, 1990
FROM: Mr. Robert W. Sheesley
SUBJECT: Petition for Zoning Variance - Item 223
James and Catherine Mitchell Property
Chesapeake Bay Critical Area Findings

SITE LOCATION

The subject property is located at 1241 Engleberth Road in the subdivision of Eagle's Nest. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME

Mr. and Mrs. James and Catherine Mitchell Property

APPLICANT PROPOSAL

The applicant has requested a variance from section 1A04.3.B.3 to allow two side yard setbacks of 23'7" in lieu of the required 50 feet."

GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding which assures that proposed projects are consistent with the following goals of the Critical Area Law:

1. "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
2. Conserve fish, wildlife and plant habitat; and
3. Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts."

<COMAR 14.15.10.01.0>

Memo to Mr. J. Robert Haines
March 13, 1990
Page 3

Findings: The applicant proposes to connect all rooftop gutters to a drywell placed at least 10 feet from the building foundation. All runoff caused by the development shall be infiltrated.

CONCLUSION

The Zoning Variance shall be conditioned so the project proposal is in compliance with the Chesapeake Bay Critical Area Regulations and Findings listed above.

Upon compliance with Chesapeake Bay Critical Area Regulations, this project will be approved. If there are any questions, please contact Mr. David C. Flowers at 887-2904.

Robert W. Sheesley
Robert W. Sheesley, Director
Department of Environmental Protection
and Resource Management

RWS:DCF:ju
Attachment

cc: The Honorable Ronald B. Hickernell
The Honorable Norman W. Levenstein
The Honorable Dale T. Volz
Mrs. Janice B. Outen

Memo to Mr. J. Robert Haines
March 13, 1990
Page 2

REGULATIONS AND FINDINGS

1. Regulation: "A minimum 100 foot buffer shall be established landward from the mean high water line of tidal waters, tidal wetlands, and tributary streams" <Baltimore County Code Sec. 22-213(a)>.

Finding: The proposed dwelling is located in alignment with the existing dwelling 50-70 feet from the mean high tide line. A 50 foot non-disturbance buffer shall therefore be established.

2. Regulation: "No dredging, filling, or construction in any wetland shall be permitted. Any wetland must be adequately protected from contamination." <Baltimore County Code Sec. 22-98>

Finding: No tidal or non-tidal wetlands were found on this site, or in the vicinity of the site.

3. Regulation: "The sum of all man-made impervious areas shall not exceed 15% of the lot" <COMAR 14.15.02.04 C.(7)>.

Finding: The sum of all existing and proposed man-made impervious surfaces equals 9.5% of the lot. This sum shall not be allowed to exceed 15% of the lot.

4. Regulation: "The stormwater management system shall be designed so that:

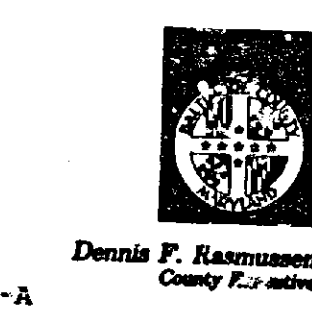
- (1) Development will not cause downstream property, watercourses, channels or conduits to receive stormwater runoff at a higher rate than would have resulted from a ten year frequency storm if the land had remained in its predevelopment state;
- (2) Infiltration of water is maximized throughout the site, rather than directing flow to single discharge points; and
- (3) Storm drain discharge points are decentralized to simulate the predevelopment hydrologic regime.
- (4) There is sufficient storage capacity to achieve water quality goals of COMAR 14.15 and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state" <Baltimore County Code, Section 22-217(h)>.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3333
J. Robert Haines
Zoning Commissioner

March 6, 1990

Mr. & Mrs. James L. Mitchell
1241 Engleberth Road
Baltimore, MD 21221

RE: Item No. 223, Case No. 90-354-A
Petitioner: James L. Mitchell, et ux
Petition for Zoning Variance



Dear Mr. & Mrs. Mitchell:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

Baltimore County
Zoning Commission
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner



Dennis F. Rasmussen
County Executive

Your petition has been received and accepted for filing this
7th day of February, 1989.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Received By:

James L. Mitchell
Chairman,
Zoning Plans Advisory Committee

Petitioner: James L. Mitchell

Petitioner's Attorney:

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner
DATE: February 1, 1990

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: James L. Mitchell, Item 223

The Petitioner requests a Variance to allow two side yard setbacks of 23 ft. in lieu of the required 50 ft.

In reference to the Petitioner's request, staff offers no comments.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/cmm

FEB 07 1990

BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL
PROTECTION AND RESOURCE MANAGEMENT

1-31-90
Date

Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Feb 1 5 30

Zoning Item #223, Zoning Advisory Committee Meeting of February 6, 1990

Property Owner: *James L. Mitchell*
Location: *W/S Englebert Rd. Extended, 110' N of Centerline* District: *15*
Water Supply: *public* Sewage Disposal: *private*
COMMENTS ARE AS FOLLOWS:

- () Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Bureau of Regional Community Services, for final review and approval.
- () Prior to new installation(s) of fuel burning equipment, the owner shall contact the Bureau of Air Quality Management, 887-3175, to obtain requirements for each installation(s) before work begins.
- () A permit to construct from the Bureau of Quality Management is required for each item as spray paint processes, underground gasoline storage tank(s) (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.
- () A permit to construct from the Bureau of Air Quality Management is required for any charcoal generation which has a total cooking surface area of five (5) square feet or more.
- () Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
- () Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, sauna, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Environmental Protection and Resource Management for review and approval. For more complete information, contact the Water Quality Monitoring Section, Bureau of Regional Community Services, 887-4500 x 315.
- () Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations for more complete information, contact the Division of Maternal and Child Health.
- () If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with the State Department of the Environment.
- () Prior to raising of existing structure(s), petitioner must contact the Division of Waste Management at 887-3745, regarding removal and/or disposal of potentially hazardous materials and solid wastes. Petitioner must contact the Bureau of Air Quality Management regarding removal of asbestos, 887-3175.
- () Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and tank removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Waste Management at 887-3745.
- () Soil percolation tests, have been _____, must be _____ conducted.
 - () The results are valid until _____
 - () Soil percolation test results have expired. Petitioner should contact the Division of Water and Sewer to determine whether additional tests are required.
- () Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled.
- () In accordance with Section 13-117 of the Baltimore County Code, the water well yield test
 - () shall be valid until _____
 - () is not acceptable and must be retested. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.
- () Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.
- () If submission of plans to the County Review Group is required, a Hydrogeological Study and an Environmental Effects Report must be submitted. For more information contact the Division of Environmental Management at 887-3980.
- () In order to subdivide this property, the owner or developer will be required to comply with the subdivision regulations of the State of Maryland and Baltimore County. If there are any questions regarding the subdivision process, please contact the Land Development Section at 887-2762.
- () Others: *Soil conditions on this property were found to be generally satisfactory prior to approval of a building permit to construct a new home at this location. Provisions set forth in correspondence dated October 31, 1989 to Mr. James Mitchell from Robert J. Sheensley at the Water Sewer Division of DEPRM will have to be fulfilled.*

BUREAU OF WATER QUALITY AND RESOURCE MANAGEMENT

Baltimore County
Department of Environmental Protection
& Resource Management
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
(301) 887-3783

Robert W. Sheensley
Director

Dennis F. Rasmussen
County Executive

Mr. James Mitchell
1239 Englebert Road
Baltimore, MD 21221

Re: Proposed dwelling to be located on lots 54-55,
Eagle West Point (AKA 1241 Englebert Rd.)
Election District 15

Dear Mr. Mitchell:

On September 27, 1989 a representative of this office, Mr. Robert Powell, conducted an inspection of the subject property to determine requirements necessary for constructing a new dwelling. Mr. Powell's inspection revealed the presence of an existing 3 room structure on site containing 1 bedroom. This structure which was apparently used as a dwelling but has not been occupied in at least 8-9 years, is in a state of disrepair and is not habitable in its present condition. The structure is served by a privy and metropolitan water.

A subsequent inspection was conducted by Robert Powell on October 6, 1989 during which several soil evaluation test pits were excavated. The results of the soil evaluations indicate the presence of favorable soil conditions in a limited area. Review of the results indicates there is sufficient sewage disposal area available to accommodate a 3 bedroom house, leaving room for one sewage disposal system installation and one complete repair in accordance with state regulations.

Prior to approval, of a building permit the following will be required:

- 1) Verify water pressure in the metropolitan water line in Englebert Rd. Water pressure greater than 35 to 40 psi will necessitate installation of a pressure reduction device.
- 2) Consult with Mr. Dave Flowers, supervisor of the Chesapeake Bay Critical Areas Program regarding siting of the dwelling. See attached site plan for dwelling siting restraints imposed by sewage disposal reserve area.

Mr. David Flowers
D.E.P.R.A.
Balto. Co Office
Baltimore Md. 21204

Dear Mr. Flowers,

Per your instructions I am sending you this letter. I have attempted to address any areas of concern that you department may have during the improvement of our home.

BUFFER ZONE: We will comply and vegetate the 50' (Min) buffer zone you recommended during our first meeting. I would like to begin the vegetation as soon as possible. Your recommendations would be greatly appreciated. As we discussed the buffer zone must be reduced in order to accommodate the sewage disposal area and structure. However unlike many other shore homes in the area the disposal area will be well buffered from the shore line. Health regulations and building codes prohibit locating the dwelling closer than depicted in the attached site plan. The will reduce the damage the root systems of surrounding trees.

NON-PERVIOUS AREA: The total non-pervious area of the property, upon completion, will be less than 10% (approx. 9.5%). The existing driveway will be extended with gravel and bordered with hedges.

TREES: If any tree has to be removed I will replace it with two new trees somewhere else on the property and this can be exclusive of the buffer zone if you wish.

ROOF TOP RUNOFF: We will use aluminum guttering (protected by plastic screening) connected to the roof leaders, then an overflow pipe and connected to a dry well inlet pipe which passes into the 12 inches of perforation material (1.5" to 3.0" dia. stone). The overflow pipe will empty onto a splash block near the "cap with lock". The dry will be 12" below grade. Perforated PVC pipe, anchored with rebar will be connected to both the "cap with lock" and the dry well inlet pipe. (see drywell design Md WRA, 1988)

RUNOFF AND DUST: Common sense procedures will be employed to manage dust and runoff including the use of sodium calcium on the gravel and filter paper and/or bales of hay will border loose material.

I hope I have addressed everything you need for your comments on this matter. If you need any additional information don't hesitate to contact me. I can be reached at work 879-2101 or at home 391-7368. Your prompt attention to this matter is greatly appreciated.

Sincerely,

Jim Mitchell
Jim Mitchell

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

CHARLES LEHRER

1117 Englebert Rd. 21221

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

John C. Day
Antonia M. Golden

1507 Englebert Rd.
1225 Englebert Rd.

CASE NUMBER: 90-354-A
1241 Englebert Road

Dear Sir:

We the Lehrer's of Englebert Road object to the Zoning or permit on this property because:

1. No sewage is in the area and the septic tanks in that area are already over flowing into the street and bay.
2. We do not need any more buildings or houses in this area because of the small road in and out.
3. There is a nonatonium in this area on new buildings because of the bry.
4. There is very little open space left in this area, and the wildlife is being driven out, like the Eagles.

RECEIVED
MAR 8 1990

ZONING OFFICE

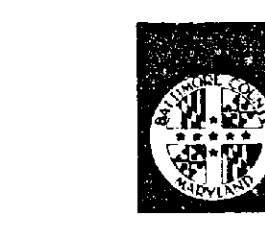
Charles & Alice Lehrer
Charles & Alice Lehrer
1117 Englebert Rd.
Balto., Md. 21221
March 6, 1990

Baltimore County
Fire Department
700 East Joppa Road, Suite 901
Towson, Maryland 21204-5500
(301) 887-4500

Paul H. Reincke
Chief

February 1, 1990

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204



Dennis F. Rasmussen
County Executive

RE: Property Owner: JAMES L. MITCHELL
Location: 11241 ENGLEBERTH
Item No.: 223 Zoning Agenda: FEBRUARY 6, 1990

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code". 1988 edition prior to occupancy.

REVIEWER: *Pat Keller* Noted and Approved
Planning Group File Prevention Bureau
Special Inspection Division

JK/KEK

Baltimore County
Zoning Commission
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

March 20, 1990



Dennis F. Rasmussen
County Executive

Mr. & Mrs. James L. Mitchell
1239 Englebert Road
Baltimore, Maryland 21221

RE: PETITION FOR ZONING VARIANCE
W/S Englebert Road Extended, 110' N of the c/l of Cross Road
(1241 Englebert Road)
15th Election District - 5th Councilmanic District
James L. Mitchell, et ux - Petitioners
Case No. 90-354-A

Dear Mr. & Mrs. Mitchell:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

Ann M. Nastarowicz
ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjb

cc: Chesapeake Bay Critical Areas Commission
Taves State Office Building, D-4, Annapolis, Md. 21404

DEPRM

People's Counsel

File

Mr. Charles Lehrer
1239 Englebert Road, Baltimore, Md. 21221

file

March 22, 1990

Deputy Zoning Commissioner
Department of Zoning for Baltimore Co., Md.
Towson, Maryland 21204

Reference: Case 90 354A

Dear Madam

Thru this letter I would like to add my favorable comments to the case in question, Mitchell Property Englebert Rd. Baltimore 21221. I am a neighbor to the property in review. My property lays to the east and the rear and in the same manner borders the property on either side (North and South) of the subject property. In view of the present status of the property it could only be enhanced by a residence meeting current codes and regulations. In my opinion the granting of this petition would serve to benefit neighborhood.

Respectively

James E. Brudzinski
James E. Brudzinski
1114 Englebert Road
Baltimore, Md. 21221

IN THE MATTER OF
THE APPLICATION OF
KOINONIA PARTNERSHIP

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* CASE NO. 91CG3731 98/162

MOTION TO ALTER OR AMEND JUDGMENT
AND REQUEST FOR HEARING

Dr. and Mrs. Charles J. E. Arnold, Mr. W. James Howard, Ms. Lucy A. C. Howard, Dr. Hamilton Moses, III, and Mr. and Mrs. Nathaniel E. Prentice (collectively, the "Neighbors") move this Court, pursuant to Maryland Rule 2-534, to alter or amend its November 14, 1991 Judgment by withdrawing its November 14, 1991 Order and entering an Order: (1) denying Koinonia Partnership's Motion to Dismiss, (2) permitting Appellants to amend their Order for Appeal and Petition of Appeal to correct a misnomer of the parties, and (3) directing that this appeal proceed on the merits.

THE COURT'S JUDGMENT

The Court granted the Koinonia Partnership's Motion to Dismiss the Neighbors' August 29, 1991 Order For Appeal and September 5, 1991 Petition For Appeal. The Court issued no opinion and gave no reasons for its decision. In support of its Motion to Dismiss, Appellee Koinonia Partnership submitted

a Memorandum on September 30 and a Reply to Appellants' Memorandum on November 1, stating that the Neighbors' filing of an Order For Appeal, in which they referred to themselves as "Ledger Hill Neighbors," constituted a legally deficient appeal on the grounds that (1) no proper appeal had been filed by an aggrieved party to the proceeding, and (2) relief for the Neighbors by way of amendment to their Order For Appeal and Petition For Appeal was prohibited.

ARGUMENT

1.

Statutory Requirements
For Standing To Appeal

Under § 26-133 of the Baltimore County Code (1988), an appeal from the County Board of Appeals to this Court may be taken in the manner provided in Article VI of the County Charter, which states in § 604 that (emphasis supplied) "any party to the proceeding who is aggrieved thereby may appeal such decision to the Circuit Court of Baltimore County." The Neighbors respectfully submit that they were (1) parties to the Board proceeding, and (2) aggrieved thereby. Accordingly, the Neighbors' appeal to this Court is permissible.

(a)

The "Party To The Proceeding"
Requirement

That the Neighbors were parties to the proceeding before the Board of Appeals below cannot be reasonably

-2-

1.2020198:11/22/91
18295-1

disputed. The Court of Appeals has ruled that, when names of individuals were submitted to and accepted by the Board of Appeals, "all these became parties before the Board." Wright v. McCubbin, 260 Md. 11, 14 (1970). In the present case, the names of each of the Neighbors were read into the record and accepted by the Board of Appeals, without objection from the Koinonia Partnership. (Board of Appeals July 26, 1991 transcript, p. 12). Although only two Neighbors attended the proceedings before the Board of Appeals, and none of the Neighbors submitted testimony, each of the Neighbors were identified, on the record before the Board of Appeals, as Protestants to the Petition sought by the Koinonia Partnership. Id.

The holding in McCubbin emanates from a consistent, established practice of permitting named individuals identified and accepted before county boards of appeal to qualify as parties to board of appeals proceedings. In Raxter v. Montgomery County Board of Appeals, 248 Md. 111 (1966), for example, the individuals protesting the Board's approval of a special exception did not appear before the Board but signed a petition admitted into evidence before the Board stating their objections. In reversing the circuit court's dismissal of the case on grounds of inadequate standing, the Court of Appeals held that "[i]f the administrative body received in writing the

-3-

1.2020198:11/22/91
18295-1

name of the protestant as a protestant, this is sufficient to make him a party before the Board." 248 Md. at 113.

Similarly, the mere submission of a letter to the Board of Appeals protesting a zoning variance and its acceptance into evidence by the Board were sufficient to make the protestant a party to a Board of Appeals proceeding. Bryniarski v. Montgomery County Board of Appeals, 247 Md. 137, 139, 143 (1967); Hertelendy v. Montgomery County Board of Appeals, 245 Md. 554, 560, 567 (1967). The Hertelendy Court also noted that for a protestant to qualify as a party to the Board proceeding, "[i]t is not required that he personally appear or personally testify at the hearing." (245 Md. at 567, emphasis supplied.) Accord, Dubay v. Crane, 240 Md. 180, 184 (1965) ("... it is not necessary that a protestant testify before the administrative agency" in order to achieve status as a party to the administrative proceeding).

(b)

The Aggrieved Party Requirement

The Neighbors, whose properties are adjoining or in close proximity to the Koinonia Partnership property (Board of Appeals July 26, 1991 transcript, p. 12; Affidavit of Lucy A. C. Howard and W. James Howard), are unquestionably parties aggrieved under the Baltimore County Charter requirements (Article VI, § 604). In Wier v. Witney Land Co., 257 Md. 600, 610-11 (1970), the Court of Appeals established the principles

-4-

1.2020198:11/22/91
18295-1

for determining aggrievement in zoning case appeals, providing, in part, that:

An adjoining, confronting or nearby property owner is deemed, prima facie, to be specially damaged and, therefore, a person aggrieved. The person challenging the fact of aggrievement has the burden of denying such damage in his answer to the petition for appeal and of coming forward with evidence to establish that the petitioner is not, in fact, aggrieved. (Emphasis supplied.)

That the Neighbors are adjoining, confronting or nearby property owners is uncontroverted on the record, and the Koinonia Partnership has also failed to dispute the location of the Neighbors' properties.

Moreover, the Koinonia Partnership failed to challenge the Neighbors' standing at any earlier stage of this dispute (see accompanying Affidavits of John P. Machen, Lucy A. C. Howard and W. James Howard). The Court of Appeals, examining the "party aggrieved" requirement in § 604 of the Baltimore County Charter, has held such failure to be determinative in declining to dismiss a zoning appeal for lack of standing, stating that its conclusion arose "particularly in view of the fact that ... standing was not even challenged" in a proceeding below. Gromey v. Gromerlinger, 235 Md. 456, 460-61 (1964). Similarly, in Pressman v. City of Baltimore, 222 Md. 330, 334 (1960), the Court rejected a motion to dismiss for lack of standing in a zoning appeal because (1) appellees failed to challenge below the standing of any of the complaints, and (2)

-5-

1.2020198:11/22/91
18295-1

that appellees' objection before the Court of Appeals came "too late to warrant a dismissal."

It is settled that in assessing proof of aggrievement, testimony may be taken by the trial court on whether personal or property rights are specifically and adversely affected by a board of appeals action. Wier v. Witney Land Co., supra, 257 Md. at 611 (quoting Bryniarski v. Montgomery County, supra, 247 Md. at 145; Town of Somerset v. Montgomery County Board of Appeals, 245 Md. 52, 63 (1966)). The Koinonia Partnership, in its November 1 Reply (p. 6), asserts a contrary view that proof of aggrievement may only be elicited from the Board of Appeals record. The Partnership's argument is incorrect. This Court may elect to hear testimony in this case, this is, receive uncontradicted affidavits on the matter.

2.

Amendment of Appellants' Order For
Appeal and Petition For Appeal

Pursuant to Maryland Rule 2-341(c), the Neighbors seek to amend their August 29, 1991 Order For Appeal and September 5, 1991 Petition For Appeal. The Motion to Dismiss in this case was precipitated by the fact that the Order for Appeal and Petition of Appeal used the name "Ledger Hill Neighbors" as a umbrella term to describe the group of individuals described above who have standing and who hired counsel and participated in this case at every stage. The sole purpose of the amendment is to provide a more complete description of the Neighbors in

-6-

1.2020198:11/22/91
18295-1

both pleadings by use of their individual names, rather than by use of the umbrella term "Ledger Hill Neighbors."

As stated in the accompanying Affidavit of John P. Machen, Esquire, the term "Ledger Hill Neighbors" was merely used as an umbrella name, for purposes of convenience, for the exclusive purpose of describing the collective group of Neighbors who retained counsel and opposed the Koinonia Partnership's Petition before the Zoning Commissioner, the Board of Appeals and this Court. Accordingly, the Neighbors seek to amend their filings of appeal for misnomer of a party under Maryland Rule 2-341(c)(4).

The Maryland Rules expressly provide that there shall be great liberality in the allowance of amendments to pleadings. Maryland Rule 2-341(c). The Maryland Appellate Courts have repeatedly ruled in strict accordance with this statutory directive, stating that amendments should be freely allowed to serve the ends of justice and to allow cases to be tried on their merits, rather than upon the technicality of pleadings. Part Drug Corp. v. Machinger Co., 272 Md. 15, 29 (1974); Crowe v. Houseworth, 272 Md. 481, 485 (1974); Staub v. Staub, 31 Md. App. 478, 480-81 (1978); 3 Poe's Pleading and Practice, §184, p. 279 (6th ed. H. M. Sachs, Jr. 1975). In Crowe, 272 Md. at 485, the Court of Appeals noted:

"One of the relatively recent, but nonetheless dramatic developments in the law, is the increased liberality with which amendments of pleadings may be allowed, with

-7-

1.2020198:11/22/91
18295-1

or without leave of court, if the ends of justice are served.

The Court of Appeals has clarified, however, that amendment to a pleading will not be allowed where it will result in prejudice to the opponent or will unduly delay the results. Robertson v. Davis, 271 Md. 708, 710 (1974). In the present case, the Koinonia Partnership is not prejudiced or delayed by the proposed amendment because there has been no substitution, addition or change of party. The very same Neighbors seeking an appeal before this Court have opposed, as formally recognized Protestants of record, the Koinonia Partnership's Petition before the Board of Appeals below (Board of Appeals July 26, 1991 transcript, p. 12). Some of the Neighbors were also formally registered as Protestants before the Baltimore County Zoning Commissioner below (Zoning Commissioner's Order, July 16, 1990, p. 1). Thus, the Koinonia Partnership cannot be prejudiced or delayed by the mere renaming of persons who have previously opposed its Petition since its inception. Moreover, the amendment sought does not change the operative facts or state any new cause of action invoking different legal principles, thereby further assuring that no prejudice or delay arises. Grenslar v. Korb Roofers, Inc., 37 Md. App. 538, 543 (1977); Robertson v. Davis, supra, 271 Md. at 710.

The Court of Appeals has specifically permitted the misnomer of a party in a pleading to be amended in Ehrlich v.

-8-

1.2020198:11/22/91
18295-1